IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 256 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MER BHIMA MERU GORANIYA

Versus

STATE OF GUJARAT

Appearance:

MR NIGAM R SHUKLA for Petitioner

MR KT DAVE, APP, for Respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/05/2000

ORAL JUDGEMENT

1. Sub-Divisional Magistrate, Porbandar, issued a notice under Section 59 of the Bombay Police Act on July 6, 1998 to the petitioner, calling upon him to show cause as to why he should not be externed for a period of two years from the districts of Porbandar, Jamnagar, Junagadh, Rajkot (Rural), Rajkot City and Amreli, on

account of allegations made against the proposed externee in the notice. After a reply to the notice was given by the proposed externee/petitioner, inquiry under Section 59 of the Bombay Police Act was conducted and, ultimately, the impugned order came to be passed by the Sub-Divisional Magistrate, Porbandar, on May 10, 1999, externing the petitioner for a period of two years from the Districts of Porbandar, Jamnagar, Junagadh, Rajkot City and Rajkot (Rural).

2. The said order was carried in appeal under Section 60 of the Bombay Police Act. The said appeal came to be dismissed. The above referred two orders have given rise to the present petition, whereby the petitioner challenges the order of externment as well as the order of dismissal of appeal on various grounds. However, Mr. Ashish D. Oza, learned advocate appearing for the petitioner, submitted that the order is bad on account of externing the petitioner from contiguous districts in absence of any reason. He also contended that the externing authority as also the appellate authority have not considered the depositions of witnesses examined by the petitioner in the inquiry under Section 59 of the Bombay Police Act and, therefore, the order is bad and the same may be quashed.

3. Mr. K.T. Dave, learned Additional Public Prosecutor, has opposed this petition.

4. Having regard to rival side contentions, a look at the notice under Section 59 indicates that the authority stated that it is proposed to extern the petitioner for a period of two years from the areas of Porbandar district as well as contiguous districts of Jamnagar, Junagadh, Rajkot City, Rajkot (Rural) and Amreli. The reasons or grounds for this proposal are not indicated in the notice. Against this, if the order of externment is seen, it is stated that the petitioner is externed from the areas of Porbandar district as well as contiguous districts of Jamnagar, Junagadh, Rajkot City and Rajkot (Rural) for a period of two years, as he may operate by staying in nearby place with the help of his associates, speedy transport and communication facilities.

5. The outcome is that, these reasons were not made known to the petitioner, which could have possibilised for the petitioner to give an appropriate reply to the notice and, therefore, the very purpose of providing Section 59 notice is frustrated. Further, the authority has given reasons in absence of any contemporaneous

material to indicate that the petitioner has roots or moorings in the contiguous districts, which can possibilise his operations while staying in those districts, as indicated in the order of externment. The order, therefore, is bad in the eyes of law and cannot be sustained. The petition deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of externment dated May 10, 1999 as also the order passed by the appellate authority dated February 16, 2000 are hereby quashed and set aside. Rule is made absolute accordingly.

[A.L. DAVE, J.]

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